U. S. Circuit Court, E. D. of Pennsylvania.

KIDD *v.* SMITH.[1]

A court of equity will not interfere by injunction to restrain a libel calculated to injure property.

The recent English authorities which sustain the right of the courts to grant injunctions against libels, are based upon Acts of Parliament, and not on the general principles of equity jurisprudence.

The existence of malice in publishing the libel, can make no difference in the jurisdiction of the court.

A bill in equity set forth that plaintiff was engaged in the business of making and selling an article under a patent; that defendants, two of whom had been in his employ, engaged in the manufacture and sale of a rival article infringing his patent; that he thereupon filed a bill against them to restrain the infringement, and that pending proceedings in that suit, the defendants maliciously published circulars, containing false and defamatory statements concerning the plaintiff, and concerning the validity of the patent. for the purpose of injuring plaintiff's business. Plaintiff prayed for an injunction to restrain defendants from publishing the aforesaid libel. *Held*, that the court had no jurisdiction to grant such relief.

MOTION for preliminary injunction.

The bill set forth that complainants carried on the business of making a light, known as the Albo-carbon light, under a patent; that the defendants, two of whom had formerly acted as agents for said light, were manufacturing a rival light, known as the Crystal-carbon light; that complainants had filed a bill against defendants, for an injunction, on the ground that the crystal-carbon light was an infringement of the aforesaid patent; that pending that suit, defendants maliciously, for the purpose of injuring complainants' business, published certain circulars containing false and defamatory statements as to complainants' light and the patent under which it was made, and that complainant's business was being damaged thereby, to an extent that was irreparable. Complainants asked for an injunction, restraining defendants from publishing copies of the circulars or making libellous or slanderous statements concerning the business of complainants or concerning the validity of said letters patent, pending the trial and adjudication of the same.

Walter George Smith, *Francis Rawle* and *A. Q. Keasby*, for complainants.

E. Clinton Rhoads and *F. Carroll Brewster*, for respondent.

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[1] See note to *Loog* v. *Bean*, 23 Am. L. Reg. (N. S.) 709.

The opinion of the court was delivered by

BRADLEY, J.—We are asked to grant an injunction in this case, to restrain the defendants from publishing certain circular-letters, which are alleged to be libellous and injurious to the patent-rights and business of the complainants; and from making or uttering libellous or slanderous statements, written or oral, of or concerning the business of the complainants, or concerning the validity of their letters-patent, or of their title thereto, pending the trial and adjudication of the principal suit which is brought to restrain the infringement of said patents.

The application seems to be altogether a novel one, and is urged principally upon a line of recent English anthorities, such as *Dixon* v. *Holden*, L. R., 7 Eq. 488; *Thorley Cattle Food Co.* v. *Massam*, 14 Chan. Div. 763; *Thomas* v. *Williams*, Id. 364, and *Herman Loog* v. *Bean*, 26 Id. 306. An examination of them, and other cases relied on, convinces us that they depend on certain peculiar Acts of Parliament of Great Britian, and not on the general principles of equity jurisprudence.

By the Common Law Procedure Act of 1854 (17 & 18 Vict. c. 125, par. 79, 81, 82), it was provided that, "in all cases of breach of contract, or other injury, where the party injured is entitled to maintain, and has brought an action, he may * * * claim a writ of injunction against the repetition or continuance of such breach of contract or other injury," &c.; and "in such action, judgment may be given that the writ of injunction do or do not issue, as justice may require," and further (par. 82), the plaintiff may at any time after the commencement of his action, apply *ex parte* for an injunction.

This statute gave to the judges of the common-law courts, the power to issue injunctions in the cases specified (*i. e.*, breaches of contract or other injury), to prevent a repetition or continuance of the injury for which suit was brought.

By the Judicature Act of 1873 (36 & 37 Vict. ch. 66, par. 17), it was enacted that the High Court of Justice should have and exercise "the jurisdiction which, at the commencement of this act, was vested in, or capable of being exercised by all or any one or more of the judges in (the common-law) courts, respectively, sitting in court or in chancery, or elsewhere, when acting as judges or a judge, in pursuance of any statute, law or custom, and all powers given unto any such court, or to any such judges or judge, by

any statute, and also all ministerial powers, duties and authorities, incident to any and every part of the jurisdiction so transferred."

As the High Court of Justice, established by the Judicature Act of 1873, was an amalgamation of all the courts of original jurisdiction of Westminster Hall, including the Court of Chancery, which became merely one of the divisions of the High Court, it followed that the Court of Chancery became invested with the jurisdiction which was given to the common-law courts, by the Common Law Procedure Act of 1854; and hence became vested with power to grant injunctions to prevent the continuance or repetition of an injury, which was actionable in any court, and for which an action was brought, although the power to grant injunctions in cases of libel, was resisted in several instances by very high authorities, as in the case of the *Prudential Ins. Co.* v. *Knott*, 10 Ch. App. 142, by Lord Chancellor CAIRNS and Lord Justice JAMES; and in that of *Beddow* v. *Beddow*, 9 Ch. Div. 89, by Sir GEORGE JESSEL. The practice of issuing such injunctions, however, finally prevailed. This statute law of Great Britain is sufficient to account for the English cases relied on by the complainants, and is undoubtedly the basis on which they really stand.

In the case of *Thorley's Cattle Food Co.* v. *Mussam*, 14 Ch. Div. 763, a leading case on the subject, MALINS, V. C., says, referring to previous cases: "I think these cases at law establish this * * * doctrine; that where one man publishes that which is injurious to another, in his trade or business, that publication is actionable, and being actionable, will be stayed by injunction, because it is a wrong which ought not to be repeated." This is an evident reference to the Common Law Procedure Act; and other cases expressly refer to the act.

Thus, in the case of *Quartz Hill Consolidated Mining Co.* v. *Beall*, 20 Ch. Div. 501, as late as 1882, Sir GEORGE JESSEL, says: "This is an appeal from a decision of Vice Chancellor BACON, granting an injunction upon interlocutory application, to restrain the publication of a libel. I have no doubt, whatever, that there is jurisdiction to grant such an injunction. It is plain that the jurisdiction conferred in the common-law courts, by the Common Law Procedure Act of 1854, extended to the granting of such an injunction. The 79th section is as large in terms as can well be, and the 32d section allows *ex parte* injunctions in every case where

a final injunction could be granted, under the 79th section. Of course, under the rule of *omne majus continet in se minus*, if the court can grant an injunction *ex parte*, *à fortiori*, it can grant it on notice. It is, therefore, clear to my mind, that the common-law courts had this jurisdiction in all common-law actions. That jurisdiction is transferred to the High Court, and that would suffice to decide this question of jurisdiction. But, by the Judicature Act of 1873, sect. 25, sub. sect. 8, a larger jurisdiction to grant injunctions than existed before, is given in every case; and in my opinion, that enactment extends the general jurisdiction given in common-law actions, to all actions whether in equity or at common law. The result, therefore, is that there is jurisdiction in a proper case, upon interlocutory application to restrain the further publication of a libel."

But neither the statute-law of this country nor any well considered judgments of the courts, had introduced this new branch of equity into our jurisprudence. There may be a case or two looking that way, but none that we deem of sufficient authority to justify us in assuming the jurisdiction. The authority of the Supreme Court of Massachusetts, in the cases of *Boston Dialite Co.* v. *Florence*, 114 Mass. 69, and *Whitehead* v. *Kitson*, 119 Id. 484, is flatly against it. So, also, are the New York cases of the *New York Juvenile, &c., Society* v. *Roosevelt*, 7 Daly 188: *Brandreth* v. *Lance*, 8 Paige 24; *Munger* v. *Dick*, 55 How. Prac. 132; also, the Georgia case of *Caswell* v. *Central Rd. Co.*, 50 Ga. 70; and the Missouri case of *Life Association of America* v. *Booger*, 3 Mo. App. 173.

We do not regard the contrary decision in *Croft* v. *Richardson*, 59 How. Pr. 356, as of sufficient authority to counteract these cases or to disturb what we consider to be the well-established law on the subject. That law clearly is, that the Court of Chancery will not interfere by injunction, to restrain the publication of a libel, as was distinctly laid down by Lord Chancellor CAIRNS, in the case of the *Prudential Assûrance Co.* v. *Knott*, 10 Ch. App. 142, where he says, in reference to an application for an injunction to restrain a libel calculated to injure property: "Not merely is there no authority for this application, but the books afford repeated instances of the refusal to exercise jurisdiction." And then referring to several authorities, "If this decision has since been overruled, it is only because of the enlarged jurisdiction conferred upon the English

Courts, by the statutes referred to. It is a standard authority on the general law, independent of legislation."

We do not think that the existence of malice, in publishing a libel or uttering slanderous words, can make any difference in the jurisdiction of the court. Malice is charged in almost every case of libel, and no case of authority can be found, independent of statute, in which the power to issue an injunction to restrain a libel or slanderous words, has ever been maintained, whether malice was charged or not.

Charges of libel and slander are peculiarly adapted to and require trial by jury, and exercising as we do, authority, under a system of government and law, which, by a fundamental article, secures the right of trial by jury, in all cases at common law, and which, by express statute, declares that suits in equity shall not be sustained in any case where a plain, adequate and complete remedy may be had at law, as has always heretofore been considered the case in cases of libel and slander, we do not think that we would be justified in extending the remedy of injunction to such cases. The application for injunction must be denied, and the auxiliary bill is dismissed with costs.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF ERRORS OF CONNECTICUT.[1]

SUPREME COURT OF FLORIDA.[2]

SUPREME COURT OF ILLINOIS.[3]

COURT OF ERRORS AND APPEALS OF MARYLAND.[4]

SUPREME COURT OF OHIO.[5]

AGENT. See *Bills and Notes.*

ASSIGNMENT. See *Deed; Gift.*

ATTACHMENT.

Foreign Attachment—Certificate of Stock.—The defendants, residing in the state of Indiana and owning stock in a bank located there, lodged

[1] From J. Hooker, Esq., Reporter; to appear in 53 Conn. Rep.

[2] From D. C. Wilson, Esq., Clerk. The cases will probably appear in 21 or 22 Florida Rep.

[3] From Hon. N. L. Freeman, Reporter; to appear in 117 Ill. Rep.

[4] From J. Shaaf Stockett, Esq., Reporter; to appear in 65 Md. Reports.

[5] From Geo. B. Okey, Esq., Reporter. The cases will probably appear in 44 or 45 Ohio St. Reports.